fore me. In any event he said the matter was never fully argued and he therefore urged upon me that I should not consider myself bound by the decision in the *Bradshaw* case.

I have given very careful thought to all the cases cited on either side having relation to section 26 or to cases like *Doughty, Mehta, Kikabhai, Wilson Box* and so on. *Bradshaw* is the only case of course directly bearing on section 26(1)(b). There is no known Singapore or Malaysian case on this point. The decision in the *Bradshaw* case is of course not a decision of the English Court of Appeal or the House of Lords but it is a decision of Pennycuick J. which has never been challenged or taken on appeal to any higher court. Whilst I am aware that sometimes a decision which is not taken further may not necessarily be correct I have come to the conclusion after careful perusal of the whole of the reported case including the case stated by the special commissioners and the judgment of Pennycuick J. himself and after also having perused the whole of the case as reported when it first went before Roxburgh J. in *Bradshaw* v. *Blunden (H.M. Inspector of Taxes) (No. 1)*[14] that it was correctly decided and I consider that although I am not bound by it I would not be far wrong in following it.

In conclusion, I would refer to another of Mr. Kerr's contentions that, since section 32(2) clearly contemplates an actual sale to a purchaser whose gains or profits shall be computed as provided therein, therefore no notional sale can be envisaged by section 32(1)(b). I cannot understand the logic of this submission. In my view, sub-section (2) only provides a method of computing the gains or profits of a purchaser where such trading stock on discontinuance has actually been sold to him.

Supposing the purchaser is a person who does not carry on or intend to carry on a trade or business in Singapore or purchases merely for investment purposes the actual sale price may be less than its market value under sub-section (1)(b). If so, the purchaser's gains or profits will be computed in relation to the market value. If the trading stock in question, however, is not sold on discontinuance but retained without an actual sale as an investment or otherwise there will be no purchaser whose gains or profits will require computation for any purposes of the Ordinance under that sub-section and that sub-section cannot accordingly limit the construction of subsection (1)(b) which, as I have already said, is crystal clear.

For all these reasons, the appeal fails and is accordingly dismissed with costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill.*

PERUMAL v. PUBLIC PROSECUTOR

[F.C. (Azmi L.P., Suffian and Gill F.JJ.) August 14, 1970]

[Kuala Lumpur — Federal Court Criminal Reference No. X. 3 of 1969]

Bribery and Corruption — Sanction — Whether sanction required for prescribed offence under the Act — Institution of prosecution — Point of time for institution of prosecution — Plea to charge — Whether consent of Public Prosecutor given subsequently sufficient — Prevention of Corruption Act, 1961, s. 26.

The High Court reserved for the decision of the Federal Court the following questions of law:—

"1. (a) Where an accused is charged for an offence under the Prevention of Corruption Act 1961 in addition or alternatively to a prescribed offence, is a consent required by section 26 of the said Act sufficient if it authorizes the prosecution of the accused only for an offence under the Act?

(b) If the answer is in the negative, what is the effect on a trial proceeding with such consent only?

2. Is the point of time for institution of a prosecution within the meaning of section 26 of the Act the moment at which the court asks an accused person to plead to the charge and, if not, what is the point of time indicated?

3. If no adequate consent is available and no Deputy Public Prosecutor is present at the time when an accused person is required to plead to an offence under the Prevention of Corruption Act and/or a prescribed offence, would the presence of the Deputy Public Prosecutor as prosecutor at the hearing of the said charges against the accused on a subsequent date be deemed to be sufficient consent for institution of prosecution within the meaning of section 26?"

The appellant was charged in the Sessions Court, Kuala Lumpur under the Prevention of Corruption Act, 1961 and alternatively under section 165 of the Penal Code. A written consent of the Deputy Public Prosecutor was produced, but this related only to the charge under the Prevention of Corruption Act, 1961.

Held: (1) where an accused is charged for an offence under the Prevention of Corruption Act, 1961 in addition or alternatively to a prescribed offence, the consent required by section 26 of the Act is sufficient if it authorizes the prosecution of the accused only for an offence under the Act. The consent of the Public Prosecutor or his Deputy is not required when the accused is charged with a prescribed offence;

(2) a prosecution under the Act is instituted when the accused is called upon to plead to the charge. If no consent is available and no Deputy Public Prosecutor is present at the time the accused person is called upon to plead to an offence under the Act, the consent of the Deputy Public Prosecutor given subsequently does not constitute a sufficient consent for the prosecution within the meaning of section 26 of the Act.

Cases referred to:-

(1) *Abdul Hamid* v. *Public Prosecutor* [1956] M.L.J. 231.

(2) *Ng Yan Pee* v. *Public Prosecutor* (1959) 3 M.C. 249.

(3) *John Brooks and William Gibson* 175 E.R. 166.

(4) *Thorpe* v. *Priestnall* [1897] 1 Q.B. 159.

(5) *Beardshley* v. *Giddings* [1904] 1 K.B. 847.

(6) *Brooks* v. *Bagshaw* [1904] 2 K.B. 798.

(7) *Haji Mohamed Paiman* v. *Public Prosecutor* [1966] 1 M.L.J. 58.

(8) *Public Prosecutor* v. *Oei Hee Koi* [1968] 1 M.L.J. 148.

(9) *Lyn Hong Yap* v. *Public Prosecutor* [1956] M.L.J. 226.

The following cases were also cited in argument: *Gill & Anor.* (1948) 75 I.A. 41; A.I.R. 1948 P.C. 128; *Berak* v. *Huda* A.I.R. 1951 Cal. 133, para. 22, 27; *Banta Singh* [1941] M.L.J. 154; *Jusoh bin Saman* [1949] M.L.J. 120; *Chuah Kooi Hoe* [1960] M.L.J. 110; *Bates* [1911] 1 K.B. 965; *Agarwalla* A.I.R. 1945 P.C. 16; *Morarka* (1948) 75 I.A. 30, P.C.; *Yusofalli Mulla Noorbhoy* (1949) 76 I.A. 158, P.C.; *Waller* [1910] 1 K.B. 864; *Johan Metz* (1915) 11 Cr. App. R. 164.

FEDERAL COURT.

Dato' David Marshall, amicus curiae.

Ajaib Singh (Senior Federal Counsel) for the Public Prosecutor.

Suffian F.J. (read by Azmi L.P.): This is a reference under section 66 of the Courts of Judicature Act, 1964, reserving for the decision of this court the following questions of law:

"1. (a) Where an accused is charged for an offence under the Prevention of Corruption Act 1961 in addition or alternatively to a prescribed offence, is a consent required by section 26 of the said Act sufficient if it authorizes the prosecution of the accused only for an offence under the Act?

(b) If the answer is in the negative, what is the effect on a trial proceeding with such consent only?

2. Is the point of time for institution of a prosecution within the meaning of section 26 of the Act the moment at which the Court asks an accused person to plead to the charge and, if not, what is the point of time indicated?

3. If no adequate consent is available and no Deputy Public Prosecutor is present at the time when an accused person is required to plead to an offence under the Prevention of Corruption Act and/or a prescribed offence, would the presence of the Deputy Public Prosecutor as prosecutor at the hearing of the said charges against the accused on a subsequent date be deemed to be sufficient consent for institution of prosecution within the meaning of section 26?"

The material facts are brief and as follows. On 1st September, 1966, the appellant appeared for the first time in the sessions court at Kuala Lumpur in arrest case No. 266 of 1966. The prosecuting officer was inspector Lim. The appellant was to be charged under the Prevention of Corruption Act No. 42 of 1961 and alternatively under section 165 of the Penal Code. The charges were as follows:

"That you on 27.8.66 at about 11.30 a.m. at Serdang, in the District of Sg. Besi, in the State of Selangor, being an agent of the Government of the Federation of Malaysia, to wit, a Technical Assistant attached to the Jabatan Kerja Raya, Ulu Langat, Kajang, did corruptly accept for yourself gratification, to wit, a sum of $400/- in cash, from one Mohd. Jaman bin Wahid, as a reward for doing an act in relation to your principal's affairs, to wit, to assist in having the Suspension Order against the aforesaid Mohd. Jaman bin Wahid as a registered contractor with the Jabatan Kerja Raya Selangor, cancelled, and that you have thereby committed an offence punishable under section 4(a) of the Prevention of Corruption Act No. 42 of 1961.

ALTERNATIVELY:

That you on the same date, time and place, being a public servant, to wit, a Technical Assistant attached to the Jabatan Kerja Raya, Ulu Langat, Kajang, did accept for yourself a valuable thing, to wit cash in the sum of $400/- without consideration, from one Mohd. Jaman bin Wahid, whom you knew to have been concerned in a business likely to be transacted by you in connection with having the Suspension Order against the aforesaid person Mohd. Jaman bin Wahid as a registered contractor with the Jabatan Kerja Raya, Selangor, cancelled, and that you have thereby committed an offence punishable under section 165 of the Penal Code, FMS Cap. 45."

As regards the main charge the consent of the Public Prosecutor is clearly required, for section 26 of the Prevention of Corruption Act provides as follows:

"(1) A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person charged with such an offence may be arrested, or a warrant may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until that consent has been obtained.

(2) When a person is brought before a court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly."

Accordingly the prosecuting officer produced a written consent dated 30th August, 1966 (Exhibit P1) as follows:

"In exercise of the powers conferred by section 26 of the Prevention of Corruption Act, No. 42 of 1961, I, Ajaib Singh, Deputy Public Prosecutor, hereby consent to the prosecution of Perumal s/o Munisamy for an offence punishable under section 4(1) of the said Act alleged to have been committed on 27th August, 1966, at 11.30 a.m. at Serdang, Kuala Lumpur, Selangor."

It will be noticed that the consent was signed by a deputy public prosecutor, but that is perfectly legal, because section 376(iii) of the Criminal Procedure Code authorises him to exercise this power of the Public Prosecutor, *Abdul Hamid* v. *Public Prosecutor*.[1] It will also be noticed that the consent mentions only a charge under section 4(1) of the Act. It does not mention the alternative charge under the Penal Code.

After the admission of the consent, the two charges were read and explained to the accused and he claimed trial to both of them.

On his next appearance in court on 21st March, 1967, Mr. Ajaib Singh, Deputy Public Prosecutor, himself appeared for the Public Prosecutor. The charges were again read and explained to the appellant and again he claimed trial.

In due course the appellant was found guilty of the principal charge and sentenced to six months' imprisonment. His appeal to the High Court was dismissed by the learned Chief Justice, who then at the request of counsel referred this matter to this court.

Question 1(a)

As to question 1(a), Dato' Marshall appearing here as *amicus curiae* submits that the consent of the Public Prosecutor or his Deputy must relate not only to a charge under the Prevention of Corruption Act (as here) but also to the charge under the Penal Code (a prescribed offence), in order to vest jurisdiction in the trial court, and that the consent which relates only to the charge under the Prevention of Corruption Act, invalidates the whole trial.

Thus the answer to question 1(a) turns on the meaning of the words "A prosecution under this Act" in section 26. Do they mean "a prosecution for an offence created by and punishable under the Act as well as for a prescribed offence" as contended by Dato'

Marshall, or do they mean "a prosecution for an offence created by and punishable under the Act only" and not for a prescribed offence, as contended by Mr. Ajaib Singh?

As we understand Dato' Marshall's argument, it is as follows. Section 26(1) of the Prevention of Corruption Act requires the consent of the Public Prosecutor (or his Deputy) "for a prosecution under this Act" and not "for a prosecution for *an offence* under this Act". It is said that there are two types of offences which can be prosecuted under the Act:

(a) offences created by the Act; and

(b) "prescribed" offences as defined in section 2 (which includes an offence under section 165 of the Penal Code).

It is said that these offences, if tried under the provisions of the Act, would attract the special procedural, evidential and other provisions of the Act; whereas, if tried under the Criminal Procedure Code, these provisions would not apply. The special provisions of the Act which apply to "prescribed offences" are section 15(1) and (2), section 17(1) and (2), section 18, section 19(1), (2) and (3), section 20(1), section 21(1) and (2), section 22, section 23(1) and (2), section 24(1) and (2), section 25(1) and (2), section 28 and section 29. One of the most important of these provisions is section 15(1) under which a statement to a police officer made by an accused person under caution is admissible.

It is said that the prosecution of a principal charge under the Act with an additional or alternative charge under any other law constitutes an unlawful joinder of charges, as different procedural and evidential provisions apply unless such other charge is a "prescribed offence" triable in the same way as an offence under the Act.

We do not agree with Dato' Marshall's submission. We are of the opinion that where an accused is charged with an offence under the Act and/or with a prescribed offence such as an offence under section 165 of the Penal Code, a consent required by section 26 of the Act is sufficient if it authorises the prosecution of the accused only for an offence under the Act and that no sanction is necessary for a prosecution for a prescribed offence.

Section 26 of the Act goes back to the Prevention of Corruption Enactment (F.M.S. No. 23 of 1938) where it appeared in virtually identical terms in section 10. There was no doubt that under the Enactment only prosecutions for offences created by it required a sanction, for the Enactment nowhere mentioned the Penal Code. That Enactment was repealed and replaced by the Prevention of Corruption Ordinance No. 5 of 1950 enacted by the legislature of the Federation of Malaya. Section 10 of the Enactment was re-enacted in virtually identical terms by section 12 of the Ordinance. But the Ordinance for the first time brought in the Penal Code. Its section 8 gave the Public Prosecutor certain powers "if he considers that any evidence of the commission of an offence under this Ordinance ... or of the commission of an offence specified in the First Schedule to this Ordinance by [a public servant] is likely to be found in any banker's book ..." Its section 13 provided by subsection (1) that "In any trial ... by a court into an offence punishable under this Ordinance ... or into an offence specified in the First Schedule to this Ordinance ..." (certain presumptions arise), and, by subsection (4) added by Ordinance No. 39 of 1952, that in such a trial a statement made by the accused under caution to a police officer was admissible. The First Schedule specified as follows: "An offence punishable under section 161 or section 165 of the Penal Code, or any conspiracy to commit or any attempt to commit or any abetment of such offence". This list was enlarged by Ordinance No. 39 of 1952 by the substitution of "sections 161 to 165 or 213 to 215 of the Penal Code" for section 161 or section 165 of the Penal Code".

"For the more effectual prevention of corruption" the Ordinance has now been repealed and replaced by the Prevention of Corruption Act No. 42 of 1961 wherein section 12 of the Ordinance reappears as section 26 whose language has been reproduced in full at the beginning of this judgment and the old subsection (1) of section 13 as section 17, and the old subsection (4) of section 13 as section 15. The language of the new sections 17 and 15 in so far as material to this judgment are identical except that instead of using the words "offence specified in the First Schedule" they use the words "prescribed offence", which is defined in section 2 in terms identical with the First Schedule to the old Ordinance.

The Act treats of two distinct types of offences, namely, offences under the Act and prescribed offences, but we do not agree that the Act *created* those two types of offences. We are of the opinion that, like its predecessors, it only creates the offences made punishable under it and not punishable under any other law, and that offences of the other type dealt with in the Act, namely, prescribed offences, were offences even before its enactment and that they have been created by and made punishable under the Penal Code, not the Act. When first the Ordinance mentioned the Penal Code and later the Act also does the same, it leaves the material words of the section dealing with sanctions unchanged. In view of this we are of the opinion that the legislature did not intend to change the original position introduced by the 1938 Enactment, that it was only prosecutions for offences under the Enactment (which clearly did not include prosecutions for offences under the Penal Code) that required a sanction. If the intention had been otherwise, the introductory words of section 26 would have been "A prosecution under this Act *or for a prescribed offence* shall not be instituted except by or with the consent of the Public Prosecutor ..."

During the course of the arguments Dato' Marshall also says that where there is no consent a cautioned statement is not admissible against the accused in reference to a specified offence. We are of the opinion that to so interpret section 15 would be to go against the clear language of that section and offend against the very first principle of statutory interpretation.

Question 1(b)

In view of our answer that a consent under section 26 of the Act is sufficient if it authorises the prosecu-

tion of the accused for an offence under the Act only though the accused is charged in the alternative with a prescribed offence, this question does not arise.

Question 2

The provision in the 1950 Ordinance (section 12) dealing with consent stated simply:

"A prosecution under this Ordinance shall not be instituted except by or with the consent of the Public Prosecutor."

This bare provision hamstrung the Public Prosecutor. Suppose that a bribe-taking public servant caught taking a bribe red-handed was arrested by the police on the spot before the police had time to apply for the consent of the Public Prosecutor, and that person was charged in court (he had to be produced in court within 24 hours). He could not be charged with an offence under the Ordinance because even if the Public Prosecutor subsequently consented to a prosecution under that charge, the lack of consent at the time of moment of the accused's appearance before the court invalidated the whole trial, *Ng Yan Pee* v. *Public Prosecutor*.[2] The accused could only be charged under the appropriate section of the Penal Code, in which event the prosecution could not take advantage of the provisions of section 4 (which enhanced the maximum penalty where a Government contract was involved), section 5 (which provided that certain gifts received by a public servant were presumed to have been given and received corruptly), section 6 (which provided that the Government might recover secret gifts), section 9 (which obliged corrupt persons to answer questions even though they incriminated them), section 10 (which provided that evidence might not be given to show that any payment of money, etc., as was mentioned in the Enactment was customary), and of course section 13 the effect of which has already been indicated.

To remove these advantages, when the 1961 Act re-enacted the old section dealing with the consent of the Public Prosecutor, it added a proviso and a new subsection (2) in the words already reproduced at the beginning of this judgment. The effect of these new provisions is to enable a corrupt person caught red-handed to be arrested on the spot and to be charged with an offence created by the Act even if the consent of the Public Prosecutor has not been obtained, provided that it is obtained subsequently.

We agree with Dato' Marshall that the point of time for the institution of prosecution within the meaning of section 26 of the Act is the moment at which the court asks the accused to plead to the charge

Dato' Marshall cites the following cases:

John Brooks & William Gibson[3]; *Thorpe* v. *Priestnall*[4]; *Beardsley* v. *Giddings*[5]; *Brooks* v. *Bagshaw*[6]; *Ng Yan Pee* v. *Public Prosecutor*[2]; *Haji Mohamed Paiman* v. *Public Prosecutor*.[7]

We agree that in the light of the above authorities a prosecution is *normally* instituted when a complaint is laid or an arrest made. This was laid down as far back as in 1847 by *John Brooks & William Gibson*, *supra*. This was a prosecution for night poaching by armed persons. The provisions of the statute contravened required that the "prosecution for every offence . . . shall be commenced within 12 calendar months after the commission of such offence". The offence was committed on 4th December, 1845, and on 19th December, 1845, information was laid before a magistrate and summonses were issued. It will be noticed that the information was laid well within the time limit. The accused were arrested in September 1846 and in the following month committed for trial. Indictment was preferred on 5th April, 1847, well outside the time limit. The judge, after convicting the accused, referred the matter to fifteen judges, who held that the prosecution had been commenced by the information and warrants to apprehend or at all events by the apprehension of the prisoners and was therefore commenced within time.

But we agree that the proviso to subsection (1), and the new subsection (2) of section 26 of the Act limit the meaning of the phrase "institution of prosecution" and that for the purposes of this section a prosecution is instituted *when the accused is called upon to plead to the charge*. In other words, irrespective of what happened prior to that stage, there must be a consent of the Public Prosecutor when the accused is called up to plead.

Question 3

As has already been stated, we are of the opinion that the consent of the Public Prosecutor or his Deputy is not necessary if the accused is charged with a prescribed offence.

But we agree with Dato' Marshall that where the Public Prosecutor or his deputy prosecutes from the inception under the provisions of the Act there is necessarily an implied consent to the prosecution, but where he does not do so and yet the accused is called upon to plead, consent by the Public Prosecutor given subsequently does not validate the institution of the prosecution unless the court is satisfied that he or a colleague has in fact given such consent prior to the moment of plea.

Section 26 does not say that the consent must be in writing. So it may be in writing or oral. Indeed in *Public Prosecutor* v. *Oie Hee Koi*[8] and associated appeals Lord Hodson giving the advice of the Privy Council said that the Public Prosecutor's consent is implicit if he is himself the prosecutor. Lord Hodson said at page 154:

"It was further argued that under section 80 of the [Internal Security] Act the consent of the Public Prosecutor to the prosecution should have been and was not obtained. The answer to this objection is that the Public Prosecutor was himself the prosecutor and his consent is implicit in his action. The provision in section 80 requiring consent is applicable where prosecutions take place ... and the Public Prosecutor is not the actual prosecutor."

In *Lyn Hong Yap* v. *Public Prosecutor*[9] the appellant was charged under the Prevention of Corruption Ordinance, 1950. On 13th June, 1952, information was laid and an application for summons against the appellant was made, and on 1st July, 1952 the deputy public prosecutor signed a consent under section 12. The question was whether the prosecution was properly instituted. At the hearing in the sessions court this question was not however raised, but the appellate judge (Thomson J. as he then was) himself raised this

question at the hearing of the appeal, and the deputy public prosecutor on going through his papers stated that his colleague had in fact given his consent to the institution of the prosecution on 2nd June, 1952 — well in advance of the laying of the information. That assurance from the bar was accepted and it was held that there was a proper consent to the prosecution. The point went on appeal to the Court of Appeal as to whether the consent was effective in that the written consent was dated after the laying of information, and the Chief Justice in a short judgment upheld the appellate judge's decision.

Conclusion

Our answers to the three questions posed are therefore as follows:

1(a)

Where an accused is charged for an offence under the Prevention of Corruption Act, 1961, in addition or alternatively to a prescribed offence, a consent required by section 26 of the Act is sufficient if it authorizes the prosecution of the accused only for an offence under the Act. The consent of the Public Prosecutor or his Deputy is not required when the accused is charged with a prescribed offence.

1(b)

This question does not arise.

2 A prosecution under the Act is instituted when the accused is called upon to plead to the charge.

3 If no consent is available and no deputy public prosecutor is present at the time when an accused person is called upon to plead to an offence under the Act, the consent of the deputy public prosecutor given subsequently does not constitute sufficient consent for the prosecution within the meaning of section 26.

Azmi L.P. and **Gill F.J.** concurred.

Order accordingly.

LIANG TAI TRADING COMPANY LTD. v. TOH THYE GUAN

[O.C.J. (Choor Singh J.) September 4, 1970]

[Singapore — Suit No. 98 of 1968]

Bills of Exchange — Claim on cheque — Post-dated cheque given in payment of antecedent debt — Whether post-dated cheque negotiable — Whether endorsement required when cheque crossed generally — Meaning of "holder in due course" — Bills of Exchange Ordinance, 1949, s. 29 — Valuable consideration — Meaning of — Bills of Exchange Ordinance, 1949, s. 13(2).

The plaintiffs received from a third party in payment to account of his debt a post-dated cheque drawn by the defendant. When presented for payment the cheque was dishonoured as the defendant had before the due date countermanded payment. The plaintiffs sued the defendant for the amount of the cheque of which they claimed to be holders in due course. The defendant denied that the plaintiffs were holders in due course. He said he had countermanded the cheque before it fell due for payment and that he was entitled to do so. He contended that the plaintiffs gave no valuable consideration for the transfer of the cheque to them.

Held: (1) the plaintiffs had given valuable consideration for the transfer of the cheque to them and this could be itemised under three heads:

(a) the cheque was received in partial payment of an antecedent debt and by virtue of the provisions of section 27(2) of the Bills of Exchange Ordinance, 1949, the presumption of valuable consideration was conclusive even though the cheque was post-dated;

(b) on receipt of the cheque the plaintiffs refrained from suing the third party for the debt due by him;

(c) on receipt of the cheque the plaintiffs not only refrained from suing the third party but also gave him further credit;

(2) both on the facts and the law, the plaintiffs were holders in due course of the cheque for $5,000 drawn by the defendant and as such they were entitled to recover from him as the drawer of the cheque the amount due on it.

CIVIL SUIT.

Lim Teow Gok for the plaintiffs.

J. B. Jeyaretnam for the defendant.

Cur. Adv. Vult.

Choor Singh J.: In this suit the plaintiffs' claim against the defendant is for $5,000 due on a cheque dated the 21st December 1966 and drawn by the defendant upon Chung Khiaw Bank Ltd. The said cheque was made out payable to "Lee Yeow Kuan or bearer" and the plaintiffs allege that "they became and are the bearers and holders in due course" of the said cheque which was on the 21st December 1966 duly presented for payment and was dishonoured because payment thereof had been countermanded by the defendant.

The defendant admits that he drew the said cheque but says that it was issued on the 26th November 1966 post-dated to the 21st December 1966 and made payable to the said Lee Yeow Kuan and crossed generally. The defendant denies that the plaintiffs became and are the bearers and holders in due course of the said cheque. The defendant admits that he countermanded payment on the said cheque but his contention is that he did so before it fell due for payment. The defendant alleges that the said cheque was handed to the said Lee Yeow Kuan on the 26th November 1966 for chickens to be supplied by him to the defendant before the 21st December 1966 and in consideration for the cheque Lee agreed to set aside at his farm chickens to the value of $5,000 exclusively for the defendant. The defendant says that he visited the said chicken farm on the 18th December 1966 and discovered that Lee had sold to a third party the chickens which he had agreed to set aside for the defendant; that thereupon he requested Lee to return the said cheque and informed him that unless the chickens agreed to be supplied by him were delivered or the said cheque was returned, he would stop payment on the said cheque; and that thereafter on the 20th December 1966 he countermanded payment on the said cheque. The defendant contends that under those circumstances he is not liable on the said cheque.

The plaintiffs say that they do not know anything about the dealings between Lee and the defendant and that they have no knowledge about the chicken transaction mentioned by the defendant. The plaintiffs say further that when they received the said cheque they